



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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May 27, 2015

Ms. Colleen Busch
850 Euclid Avenue
Berkeley, CA 94708

Re: Formal Complaint 15-FC-146; Alleged Violation of the Access to Public Records Act by the St. Joseph County Prosecutor's Office

Dear Ms. Busch,

This advisory opinion is in response to your formal complaint alleging the St. Joseph County Prosecutor's Office ("Office") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Office has responded to your complaint via Ms. Jessica McBrier, Director, Special Project and Media Relations. Her response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on April 28, 2015.

BACKGROUND

Your formal complaint alleges the St. Joseph County Prosecutor's Office violated the Access to Public Records Act by not providing records responsive to your public access request.

On or about March 26, 2015 you requested access to a video confession, circa 1992, from the St. Joseph County Prosecutor's Office. Your document request was received on April 7, 2015 and the Office responded on April 9, 2015 acknowledging your request. On April 23, 2015, the Office followed up with a denial stating the record was investigatory and the records have been subsequently returned to the investigating law enforcement agency.

The Office responded that it does not maintain the record you requested and therefore it cannot be produced. Additionally, any materials they have related to a presentence report are confidential under the APRA and non-disclosable.



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ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." See Ind. Code § 5-14-3-1. The St. Joseph County Prosecutor's Office is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Office's disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

In this case it appears as if your records request was simply made upon a public agency which is not the custodian of the records you seek. The Prosecutor's Office has identified several other agencies which may have those records. It is my sincere hope this information leads you to obtain the information you seek.

CONCLUSION

The St. Joseph County Prosecutor's Office is not in violation of the Access to Public Records Act because the office did not possess or maintain the record requested.

Regards,

A handwritten signature in black ink, appearing to read "LH Britt", is written over a horizontal line.

Luke H. Britt
Public Access Counselor

Cc: Ms. Jessica McBrier